STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Union Electric Company, d/b/a AmerenUE Central Illinois Public Service Company, d/b/a AmerenCIPS	)))	
	)	Docket No. 00-0650
Petition for (i) transfer of retail electric business and associated certificates of public convenience and necessity; and (ii) approval of related tariffs.	)))))	
Union Electric Company d/b/a AmerenUE Notice of transfer of distribution and transmission assets and retail electric business to an affiliate and entry into various agreements pursuant to Section 16-111(g) of the Illinois Public Utilities Act.	)))))))	Docket No. 00-0655 (Consol.)

INITIAL BRIEF
OF
THE AMEREN COMPANIES

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Union Electric Company ("AmerenUE") and Central Illinois Public Service Company "AmerenCIPS") (jointly, the "Ameren companies") submit this Brief in support of: i) AmerenUE's Notice filed pursuant to Section 16-111(g) of the Illinois Public Utilities Act ("Act"), 220 ILCS 5/16-111(g), giving the Commission notice of AmerenUE's intent to transfer all of its Illinois distribution assets and all Illinois transmission assets other than associated with AmerenUE's Venice, Illinois generating plant ("T&D Assets") and associated liabilities and its Illinois retail electric business, to AmerenCIPS; and ii) their Petition seeking the Commission's approval pursuant to Section 7-203 of the Act of the transfer to AmerenCIPS of AmerenUE's certificates of convenience and necessity related to AmerenUE's provision of retail electric service in Illinois.[1] (The two transaction shall be referred to as the "Transfer.")

INTRODUCTION

The principal purposes in Illinois of the transfers of the electric and gas properties and businesses relate to the restructuring of the Illinois operations of the Ameren Corporation ("Ameren"), the parent of both AmerenUE and AmerenCIPS. Ameren is a registered holding company subject to regulation by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 ("PUHCA"). AmerenUE provides retail electric and gas service to the public in that portion of the St. Louis metropolitan area located in the State of Illinois ("Metro East"). AmerenUE also provides retail electric and gas service in the State of Missouri. AmerenCIPS provides electric and gas service in the State of Illinois.

[1] Concurrently with the Notice, AmerenUE and AmerenCIPS filed a petition requesting that the Commission authorize AmerenUE to transfer its Illinois retail gas assets and associated liabilities and business to AmerenCIPS.

Ameren previously restructured AmerenCIPS' operations by means of a sale of all of AmerenCIPS' generating assets to an affiliate and by having a separate affiliate assume all of AmerenCIPS' marketing responsibilities. AmerenCIPS now operates as a pure "wires" business.

Ameren now seeks to: i) separate all Illinois regulated utility operations from the electric generation and marketing functions; and ii) consolidate all of Ameren's Illinois regulated operations in a single entity, AmerenCIPS. Upon the transfer of AmerenUE's retail electric and gas assets and businesses in Illinois, AmerenCIPS will succeed to AmerenUE's retail utility operations, and will provide the retail electric and gas services currently provided by AmerenUE pursuant to the tariffs currently in effect for AmerenUE. For its part, AmerenUE will cease to operate as a public utility in this State.

As will be discussed herein, the Transfer will not adversely affect either the reliability of electric service provided to Metro East retail electric customers or the rates that those customers are charged during the mandatory transition period under the Illinois Customer Choice Law and Rate Relief Law of 1997 ("Customer Choice Law"). 220 ILCS 5/16-111(g) (1999). AmerenCIPS will obtain the generating supply necessary to serve the Metro East electric load under AmerenCIPS' existing power supply agreement ("PSA") with Ameren Energy Marketing Company ("AEMC") After the Transfer, Metro East electric customers will continue to pay the rates they are currently charged under AmerenUE's retail tariffs, through at least December 31, 2004, when the retail rate freeze expires, and until such time as the Commission approves a change in those rates.

The record does not reflect any reason why the Transfer should not go forward, and the Commission should approve the Transfer within the time period set forth in Section 16-111(g).

REASONS FOR THE TRANSFER

The Ameren Companies, through Craig Nelson, explained that there are several reasons for the Transfer:

1. AmerenUE's forecast shows that an additional supply of power and energy beyond its current generation capacity will be required through 2004 and beyond in order to provide for its Missouri and Illinois customers' needs and maintain a 15% reserve margin. AmerenUE forecasts capacity shortfalls of 327 MW in 2001, 410 MW in 2002, 462 MW in 2003, and 583 MW in 2004. These shortfalls will have to be met through the purchase of power and energy at market prices or with the addition of new AmerenUE generation capacity.
2. The transfer of AmerenUE's Metro East service territory in Illinois to AmerenCIPS would include the transfer of 520 MW of net load. This transfer would alleviate AmerenUE's capacity shortfall through 2004.
3. AmerenCIPS has a PSA with AEMC that provides full requirements for AmerenCIPS which will automatically cover the transferred load, thus assuring Metro East customers an adequate power supply. The PSA will insulate Metro East customers remaining on bundled tariffs from the volatility of market prices through 2004.
4. The Transfer will insulate these customers remaining on bundled tariffs from any meaningful risk of a rate increase through the term of the PSA, December 31, 2004.

5. The transfer will assure an adequate power supply for the former AmerenUE Metro East customers, while maintaining the same rates that were in existence before the transfer. AmerenCIPS intends to maintain the same rate schedules that were in existence immediately prior to the transfer.

6. Ameren anticipates administrative cost savings after the transfer. The elimination of one utility in Illinois will decrease the number of regulatory filings required of Ameren. As an example, Section 16-125(b) of the Act requires each utility in Illinois to file an electric reliability report including the results of a survey of customers. The transfer will enable Ameren to consolidate the reports and eliminate the cost of a separate and redundant survey in the former AmerenUE territory. It will also provide for a single point of contact in AmerenCIPS for regulatory matters in Illinois.

7. The pending version of the Standards of Conduct and Functional Separation Rules for Illinois Utilities imposes different levels of compliance on electric utilities based on the location of their principal service territory. After the Transfer, the functioning of Ameren's retail electricity business in Illinois will be subject to a consistent set of rules governing energy supply activities within the utility. In addition, the Transfer will provide a clean split between Ameren's activities in Illinois and Missouri, which is not deregulated at this time.

8. The transfer will terminate the obligation of AmerenUE's Illinois customers to pay decommissioning charges related to AmerenUE's Callaway nuclear plant.

Ameren Ex. 1, App. G, pp. 8-10.

Moreover, Mr. Nelson explained that, from the perspective of customer contact, there will be little in the way of noticeable change. Id., pp. 11-12. The same people will be using the same systems, procedures and processes and will continue to deliver the high quality service our customers have come to expect. Existing systems and processes of handling customer reported outages and other problems will not change. Id.

THERE IS NO REASON TO PROHIBIT THE TRANSFER

IIEC offered several "concerns" regarding the affect of the Transfer on customers and on the development of a competitive market. Staff initially joined in some of these concerns, but, after further explanation and commitments by the Ameren Companies, indicated that it did not object to the Transfer. None of IIEC's concerns is valid, and the Transfer should be approved, subject only to those commitments made to by the Ameren Companies in the course of this proceeding.

A. The Transfer will not adversely affect reliability of service

After the Transfer, AmerenCIPS will continue to provide safe and reliable utility service. The PSA with AEMC, initially, and later the wholesale market, will provide AmerenCIPS with a safe and reliable source of electric supply. Moreover, AEMC has adequate capacity to serve the existing AmerenCIPS load and the AmerenUE load that is to be transferred. AmerenUE provided a load-resource analysis for AEMC for the years 2001-2004. Ameren Ex. 1, App E.

That analysis shows that AEMC has adequate existing resources to serve the post-transfer AmerenCIPS load. Id.

Staff did not question Ameren's ability to provide reliable service. Indeed, Staff witness Larson agreed that the Ameren Companies had demonstrated that they would have adequate capacity to serve the Metro East load. Staff Ex. 3, p. 3.

IIEC, suggested that there may be adverse service effects. IIEC did not, however, contend that AmerenCIPS would be unable to meet firm load obligations. Rather, IIEC suggested that the Transfer would adversely affect the ability of Ameren to serve interruptible load. IIEC witness Mr. Stephens expressed "concern" that interruptible customers might experience an increased level of interruptions because of the transfer. There are two reasons why this concern should be disregarded. First, there is no obligation to serve non-firm, interruptible load. Second, the record demonstrates that the Transfer will not alter the operation of the interruptible tariff.

First, and most significantly, interruptible cutomers do not have any expectation of uninterrupted service. They have contracted for non-firm service, and the utility providing it has no obligation to limit the number of interruptions. If interruptible customers want firm service, they can request it, and pay for it, under the terms of the utility's tariff. As Mr. Nelson explained, utilities have no capacity planning or reserve obligation toward interruptible customers. Tr., 58-60. To the contrary, for planning reserve purposes, utilities exclude interruptible load. Id. It is not included in the peak that utilities must have capacity to serve, and utilities do not add capacity to serve interruptible load. Id.

Second, Mr. Nelson explained that the Transfer will not produce any change in the operation of the interruptible tariff. Currently, AmerenUE's interruptible customers are served as

part of a single, integrated control area system. They will be customers on that same system after the transfer. There will be no change in applicable planning or operating reserve requirements or margins, and the total system load, annual system peak and resources will be exactly the same before the transfer as after. AmerenUE, AmerenCIPS and Ameren Energy Marketing Company (AmerenCIPS' supplier) each maintain a minimum planning reserve margin of 15%. Ameren Ex. 2, p. 7.

Accordingly, IIEC's argument that the Transfer would make non-firm service less firm is inapposite and should be rejected.

B. The Transfer will not create a strong likelihood of a request for a rate increase.

Under Section 16-111(g), the Commission may reject the Transfer if there is a "strong likelihood" that the Transfer would cause ratepayers to be subject to a rate increase request under Section 16-111(d) during the mandatory transition period. The projected returns on equity provided in Appendix F to the Notice (Ameren Ex. 1, App. F) amply demonstrate that there is very little risk that AmerenCIPS would be entitled to request a base rate increase under Section 16-111(d). That subsection authorizes a utility to seek a base rate increase where it can demonstrate that the two-year average of its return on equity is below the average of the monthly yields of 30 year Treasury bonds for the same period. Treasury bond yields have averaged approximately 5.79% for the two year period ending June, 2000. By contrast, and based on very conservative assumptions, the lowest annual projected return on equity, with the transaction, shown on Appendix F is significantly above that level.

As explained by Mr. Nelson, if AmerenUE maintains the Metro East operations, it would have to contract for additional capacity, and would be susceptible to significant changes in market prices, an increase in the cost of fuel or operations, or a significant loss of customer base

that would lower returns significantly. However, the PSA guarantees that generation-related costs cannot increase before January 1, 2005, and are frozen at their current level. Hence, there is very little risk -- and certainly "no strong likelihood" -- that Metro East customers would be subject to a rate increase during the transition period as a result of the Transfer. Ameren Ex. 1, App. G, p. 12; App. F (conf.).

Staff and IIEC questioned the validity of the Companies' analysis. Staff, in particular, questioned whether a rate increase might be required if AmerenCIPS were required to reduce its rates by 5% in 2002 pursuant to the provisions of the Customer Choice Law. A rate decrease would occur only if required by Section 16-111(b) of the Customer Choice Law. That Section sets forth the residential rate decrease provisions of the Law, which are divided into various categories, depending on the number of customers a utility had as of certain dates and the level of a utility's residential rates, relative to the average residential rate for a group of Midwest Utilities. Section 16-111(b) defines the Midwest Utilities as consisting of all investor-owned electric utilities with annual system peaks in excess of 1000 MW in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio and Wisconsin. Both AmerenUE and AmerenCIPS are in the category of utilities whose residential rate decrease obligations are subject to the relationship of their residential rates to the Midwest Utilities' average. Accordingly, the Section made AmerenUE and AmerenCIPS subject to two potential 5% rate decreases (in addition to an initial August 1, 1998 rate decrease, which both companies made): i) on October 1, 2000, a rate decrease equal to the lesser of 5% or the percentage by which their average residential exceeds the average residential rate for the Midwest Utilities based on FERC Form 1 data for calendar year 1999; and ii) on October 1, 2002, a rate decrease equal to the lesser of 5% or the percentage by which their average residential exceeds the average residential

rate for the Midwest Utilities based on FERC Form 1 data for calendar year 2001. Neither AmerenUE nor AmerenCIPS was required to make any rate decrease on October 1, 2000, and it is highly unlikely that either will be required to make any rate decrease on October 1, 2002. Ameren Ex. 5, pp. 1-2.

In connection with the possibility of a residential rate decrease on October 1, 2000, Ameren performed an analysis of the relationship of the AmerenCIPS and AmerenUE residential rates to the Midwest Utilities average for 1999. Ameren Ex. 5, p. 2. Both Ameren CIPS and AmerenUE were comfortably below the average. The Commission Staff performed its own analysis and apparently agreed, because no rate decrease was required. Id. A 2002 rate decrease would be based on a 2001 test period, and the record reflects no material change in circumstances either occurring since 1999, or occurring before the end of 2001, that would produce a different result. Id.

Regardless, AmerenCIPS committed that, when calculating whether AmerenCIPS is entitled to seek a rate increase during the mandatory transition period, AmerenCIPS will reverse the effect of any residential rate decrease taking effect on October 1, 2002 pursuant to Section 16-111(b) of the Customer Choice Law. Further, should AmerenCIPS still be entitled to request a rate increase during the mandatory transition period, after having reversed the effect of any such residential rate decrease on October 1, 2002, AmerenCIPS will exclude from such a rate increase request the effect of any such residential rate decrease. This commitment will remain effective throughout the mandatory transition period. Ameren Ex. 5, p. 3.

IIEC contended, that unless there is a strong likelihood that AmerenUE customers would see a base rate increase before the end of the rate freeze period absent the Transfer, the insulation of these Illinois customers from market price volatility and meaningful risk of a rate increase is

of little value. As Mr. Nelson explained, the likelihood of a base rate increase absent the transfer is greater than if the transfer takes place. AmerenUE is faced with a forecasted capacity shortfall. That shortfall must be made up with purchases at market prices or the construction of additional capacity. Either scenario would result in additional costs that could ultimately be passed on to the customers. With the transfer both scenarios become null. Ameren Ex. 2, p. 6.

Accordingly, the record firmly establishes that there is no strong likelihood that after the Transfer Metro East ratepayers will be subjected to a rate increase request.

C. The Transfer is consistent with market restructuring

The Customer Choice Law implemented a comprehensive restructuring of the electric industry in Illinois. The restructuring package includes mandatory rate cuts for residential consumers and phases in the opportunity for all consumers to choose their electric supplier. Other parts of the package provide utilities the opportunity to quickly and efficiently restructure, reorganize and transfer assets in order to adjust to the competitive market. The proposal to transfer AmerenUE's T&D Assets and associated liabilities to AmerenCIPS, and thereby separate the Metro East delivery operations from generation and marketing, is fully authorized and, indeed, encouraged by the Customer Choice Law, as well as by previous statements and actions of the Commission.

The Commission and others in the state have expressed the belief that competition would be enhanced where competitive generation and related marketing functions were physically or functionally separated from the utility transmission and distribution system. For example, in the Commission's "Report to the Senate President: Analysis of Electric Restructuring with Particular Emphasis on S. B. 55," dated August 15, 1997, the Commission observed that spin-off of generation assets would be one manner in which to address market power concerns. (Id., pp. 9-

14). Likewise, in its Order implementing affiliate transaction rules, the Commission noted its preference that the unregulated generation and marketing function be separated from the utility transmission and distribution functions. (Order, Rulemaking on Non-Discrimination in Affiliate Transactions for Electric Utilities, Docket Nos. 98-0013 and 98-0035 cons.) (September 14, 1998, pp. 8-9).

The pace of change and restructuring in the Illinois energy market has greatly accelerated. In addition to approving the transfer of AmerenCIPS' generating assets to Ameren Energy Generating Company ("Ameren Generating"), the Commission also has approved the sale or transfer of Illinois Power's generating assets to an affiliate; the sale of IP's Clinton unit to an unaffiliated entity; the sale of Commonwealth Edison's fossil plants to Edison Mission Energy; and the transfer of ComEd's nuclear units to an affiliated generating company.

IIEC was concerned that the Transfer could be detrimental to the development of the competitive market. IIEC suggested that transferring load responsibility for Metro East from AmerenUE to AmerenCIPS would "remove" 520 MW from the Illinois market. This is not so. The total regional load and total regional resources will be the same before and after the Transfer. No generation is being somehow lost. It is simply a question of whether Ameren buys resources from someone else (thereby "removing" someone else's 520 MW from the market) or uses its own resources. Ameren has chosen the latter so that is can both reduce its overall regulated cost of service and further the separation of wires and the generation functions in Illinois. Ameren Ex. 2, p. 8.

D. Ratepayers will not forego refunds

IIEC witness Stephens and Staff witness Borden both expressed concern that the Transfer may cause Metro East ratepayers to forego refunds under Section 16-111(e) of the Customer

Choice Law that they might otherwise have received if the transfer did not occur. The record does not support this position. To the contrary, the record showed that the Transfer is not likely to have any impact, and that it is highly unlikely that AmerenUE would be required to make refunds absent the transfer.

Section 16-111(e) requires electric utilities to refund "excess earnings" during the mandatory transition period to ratepayers. The term "excess earnings" is defined as the two-year average return on common equity (measured as of September 30 of each year) in excess of the average 30-year treasury rate for the same two year period plus an "Index" plus 1.5 percentage points. For 1998 and 1999, for both AmerenUE and AmerenCIPS, the Index was 4.00 percentage points. Ameren Ex. 2, p. 2. For 2000 through 2004, it will be 7.00 percentage points. AmerenUE was required to make refunds for the 1998-99 period, and Ameren expects that AmerenUE will have to make a smaller refund for 1999-2000 (because of the increase in the Index from 4.00 to 7.00 percentage points in 2000, producing an average Index of 5.5 percentage points). Id.

Both Mr. Stephens and Mr. Borden suggested that, because AmerenUE has made refunds for the 1998-99, it is possible that AmerenUE would have to make such refunds going forward. This is not the case. The increase in the Index effective in 2000 will eliminate AmerenUE's "excess earnings" and, regardless of whether the transfer occurs, AmerenUE will not be required to make refunds.

To demonstrate this point, Ameren performed an analysis that assumed that the future yields on 30 year treasury bonds would be 6%, which produces a refund "trigger point" of 14.5%. The trigger point is calculated by adding the yield on the 30 year treasury bonds (6%) plus the Index (7%) plus 1.5%, for a total of 14.5%. Ameren then compared this figure with the

forecasts of AmerenUE's return on common equity for Metro East for the years 2000-2004, using the methodology set forth in Section 16-111(e). In this regard, Ameren assumed customer load retention of 100%, to give effect to Mr. Stephens' assumption that AmerenUE will lose no load to competitive suppliers. Ameren Ex. 2, p. 2.

The analysis showed that, using the statutory methodology, for no future two year period will AmerenUE's Metro East return on common equity exceed the applicable trigger point. Moreover, Ameren's analysis is extremely conservative. It assumes, as mentioned, no load loss -- meaning a maximization of revenue. Further, Ameren did not adjust the cost of service to reflect any increased generation costs that would result if AmerenUE were to remain responsible for the Metro East load and, therefore, had to purchase additional capacity. Thus, Ameren assumed maximum revenues and minimum costs, and still the analysis showed that no refunds would be required. Accordingly, there is no need for concern on the part of the Commission that the Transfer would avoid any refund that would otherwise accrue.

Staff expressed concern that the Ameren Companies would not be entitled to use the 7.00% Index, which is available only to Companies which waive their right to seek an extension of transition charges necessary beyond 2006. Ameren intends to waive such right, and committed that, if the Transfer is consummated, AmerenCIPS and AmerenUE waive any right to seek such an extension. Ameren Ex. 3. The Ameren Companies' Draft Order proposes such a condition.

E. It is not appropriate to condition the Transfer on post-transition rates

Mr. Stephens and Mr. Borden also indicated that they were concerned about the effect of the transfer on bundled utility rates after the mandatory transition period and the corresponding rate freeze expire. This concern raises a policy issue that really should not still be an issue. It

was resolved when the Customer Choice Law was adopted. What AmerenUE and AmerenCIPS are trying to do here in Illinois is separate the delivery (or "wires") function from the generation and marketing functions. This is accomplished by having vertically integrated utilities transfer (by sale, assignment or otherwise) their generation to affiliated or unaffiliated entities. This is a fundamental goal of the Illinois restructuring, so long as it does not jeopardize reliability or create the risk of a base rate increase during the transition to market-based pricing. Once that transition period is complete, there is no legal or policy barrier to implementing market-based pricing, especially for large, industrial customers like IIEC.

The General Assembly sought to separate the two functions, by requiring the Commission to develop rules regarding functional separation and by encouraging electric utilities to restructure their operations (i.e., move generating assets outside of the utility). This encouragement was provided by adopting provisions that give electric utilities the ability to expeditiously transfer their generating plants to affiliated or unaffiliated entities. Section 16-111(g) of the Customer Choice Law expressly allows them to do so, subject only to two narrow considerations: 1) whether reliability would be jeopardized by the transfer; and 2) whether the transfer would undue risk of a base rate increase during (not after) the transition period. For what should be obvious reasons, the General Assembly did not place any restrictions on transfers related to whether ratepayers would face market-based generation pricing after the transition to market-based generation pricing.

The Commission should not place any such restrictions on this transfer, for at least two reasons. First, it would be contrary to the goals of the Customer Choice Law. The Customer Choice Law is intended to bring about competitive, market-based pricing for generation after the transition period. That is precisely what this transfer will accomplish. Second, the Commission

has allowed other utilities to put the overwhelming majority of the electric load in this state in the same position, and should not single out Metro East for different treatment. AmerenCIPS and Illinois Power have both divested themselves of all of their generation, and Commonwealth Edison has divested itself of all of its fossil generation, pursuant to the provisions of Section 16-111(g). Ameren Ex. 2, pp. 4-5. Those companies replaced the transferred generation with power supply contracts that expire on December 31, 2004, meaning that they will have to rely on market sources beginning January 1, 2005, when the rate freeze expires. Id. Further, the Commission has approved (also under Section 16-111(g)) ComEd's proposal to transfer all of its nuclear generation to an affiliate, to be replaced by a power supply agreement, which expires at the end of 2006, and under which the final two years will have market-based pricing. Id. In other words, all customers of ComEd, Illinois Power and AmerenCIPS -- roughly 92% of the retail electric customers in the State -- may be assessed rates which reflect market-based generation costs beginning in 2005. Id. Moreover, it is appropriate that customers in a deregulated market pay market-based generation charges. That is what a deregulated generation market is. That is why the rate freeze expires when it does -- at the end of the transition to market-based pricing. At that point, any remaining bundled rates of electric utilities may be adjusted up or down to reflect the cost to utilities of acquiring power to serve their remaining bundled customers. Id.

Indeed, Staff witness Larson noted that, "because the Commission has lost juridiction over the majority of the power supply in Illinois, the additional loss of jurisdiction over AmerenUE's Illinois load is of little consequence." Staff Ex. 3, p. 4. It would not be appropriate to treat Metro East customers differently from customers of other utilities.

In the Customer Choice Law, the General Assembly did not place any restrictions on changes in rates to reflect market prices after the transition to a deregulated generation market. IIEC apparently reads the Customer Choice Law differently. What IIEC plainly seeks here is not a deregulated market at all. Rather, IIEC apparently views the General Assembly's movement to a deregulated market as a hedge. If generation costs from utility-owned generation exceed market prices, IIEC sees the market as a safety valve. If, however, market prices exceed the cost of utility-owned generation, IIEC wants the utility to be required to provide service at regulated prices. In other words, the utility bears the risk of owning generation assets in a competitive world, but cannot assess competitive prices for the generation. This is completely inconsistent with the Illinois deregulation model, which expressly allows utilities to restructure their operations by transferring the costs and benefits associated with generation to another entity, and does not require utilities to either obtain or retain generation in order to provide service at below market prices.

WHEREFORE, for all the reasons set forth herein, AmerenUE and AmerenCIPS respectfully request that the Commission approve the Transfer, subject only to those conditions reflected in the accompanying Draft Order.

Respectfully submitted,

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d/b/a AmerenUE

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Certificate of Service

Christopher W. Flynn, an attorney, hereby certifies that he caused copies of the accompanying Initial Brief of the Ameren Companies to be served on the following individuals via e-mail and U.S. first-class mail this 29th day of November, 2000.

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